

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

TRACY HOGAN

PLAINTIFF

V.

NO. 3:14CV156-BD

**CAROLYN W. COLVIN, Acting Commissioner,
Social Security Administration**

DEFENDANT

ORDER

Oral argument hearing was held on June 11, 2015. Following a review of the record and arguments presented by counsel, the Court announced its findings of fact and conclusions of law, affirming the Commissioner's decision. Based on the record as a whole, there was sufficient evidence to support the decision that Ms. Hogan was not disabled within the meaning of the Social Security Act as of the time of the hearing before the Administrative Law Judge. An excerpted transcript with detailed findings and conclusions is attached.

Accordingly, the decision of the Commissioner is affirmed, and the case is hereby dismissed, with prejudice.

So ordered, this 1st day of July, 2015.


UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION

TRACY HOGAN,
PLAINTIFF,
VS.
SOCIAL SECURITY ADMINISTRATION
COMMISSIONER,
DEFENDANT.
.

. Docket No. 3:14-CV-00156-BD
. Little Rock, Arkansas
. June 11, 2015
. 9:59 A.M.

TRANSCRIPT OF
EXCERPTED ORAL FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN ORAL ARGUMENT HEARING
BEFORE THE HONORABLE BETH DEERE
UNITED STATES MAGISTRATE JUDGE

ELECTRONIC COURT RECORDER-OPERATOR: Ms. Suzy Flippen

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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

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P R O C E E D I N G S

(Call to order of the Court.)

* * *

THE COURT: All right. Then I'm ready to rule in this case unless there is something I have -- anybody wants to add.

So, these are my findings and conclusions. First, jurisdiction is proper. There is no dispute, all the procedural prerequisites have been satisfied. The parties have consented to my jurisdiction, so it's appropriate for me to rule.

I have reviewed the parties' briefs, the ALJ's decision, all of those portions of the record the parties have cited, in addition to other parts of the record that I've reviewed, including the entire transcript of the hearing before the ALJ.

Standard of review is well settled; is there sufficient evidence, considering the record as a whole, to support the Commissioner's decision, and second, is there any legal error?

Ms. Hogan is appealing the Commissioner's finding that she was not disabled. And because the Appeal's Counsel denied her request for review, the ALJ's April 15, 2013 decision is deemed the Commissioner's final decision.

She applied for disability benefits on October 14,

1 2011; first, alleging an onset date of January 1, 2001 -- 2007
2 -- excuse me -- but later amending the onset date to October
3 14, 2011.

4 The ALJ followed the five-step analysis that ALJ's
5 use in every case. He did find that Ms. Hogan had severe
6 impairments; carpal tunnel syndrome of the upper left
7 extremity, joint pain, lumbago, tremors, depression, anxiety
8 disorder, obsessive compulsive disorder, and polysubstance
9 abuse in remission.

10 Based on these impairments, as well as non-severe
11 impairments, the ALJ found that Ms. Hogan could perform a
12 reduced range of light work. To accommodate her physical
13 impairments, the ALJ limited her to jobs that would require no
14 more than frequent reaching and handling with her left non-
15 dominant hand and wrist. In addition, she would not be able
16 to climb ladders or scaffolds and could not be exposed to
17 unrestricted heights.

18 To accommodate her mental impairments, the ALJ
19 limited Ms. Hogan to performing simple unskilled or rote
20 activities and to understanding, following, and remembering
21 concrete instructions. He further limited her to jobs
22 requiring only limited contact with the public, superficial
23 contact with coworkers and supervisors.

24 Ms. Hogan had no past relevant work, but a Vocational
25 Expert identified jobs that are available in sufficient

1 numbers that a person with Ms. Hogan's limitations could
2 perform.

3 Ms. Hogan raises several points on appeal. She
4 challenges the ALJ's Residual Functional Capacity
5 determination. Her appeal focused primarily -- focuses
6 primarily on her mental impairments. And there's not a -- I'm
7 going to say there's not a serious argument that the ALJ erred
8 with respect to her physical limitations. Although she raises
9 some of those in her argument today, they're not seriously
10 challenged in her brief. And I'm -- to me, it's clear that
11 the limitations set out by the ALJ adequately accommodate her
12 physical limitations; that is, her carpal tunnel syndrome and
13 her tremors, as well as her joint pain, lumbago. She's --
14 she's limited to a reduced range of light work according to
15 the ALJ.

16 So, turning to her mental impairments, she makes
17 three general arguments. First, that the ALJ did not
18 adequately consider all of the medical opinions of the
19 consulting psychologist, Mary Ellen Zeoco, who is a Ph.D.
20 psychologist. Dr. Zeoco examined Ms. Hogan on December 20th,
21 2011. That part of her opinion that the ALJ should have
22 considered, according to Ms. Hogan, are her opinions that Ms.
23 Hogan, and I'm quoting here:

24 "Might sometimes have some
25 difficulty sustaining

1 concentration on basic tasks due
2 to emotional distress."

3 End quote. That she, quote:

4 "Might have some difficulty
5 sustaining persistence in
6 completing tasks due to emotional
7 distress."

8 End quote. And also that she, quote:

9 "Might have some difficulty
10 completing work-like tasks within
11 an acceptable time frame."

12 End quote.

13 Again, Ms. Hogan argues that the ALJ should have
14 given more weight to not only these opinions, but also to the
15 Global Assessment Functioning score, or sometimes we shorthand
16 that to GAF, the GAF Score of 45, which is -- is extremely
17 low.

18 Her second general argument is that the ALJ's
19 credibility determination was flawed. And in support of that,
20 she cites her long history of treatment and prescription
21 medications. She argues that the ALJ put too much reliance on
22 the state agency doctor, who did not examine Ms. Hogan, and
23 that would be Dr. Kevin Santulli, who is also a Ph.D.
24 psychologist.

25 And her third general argument is that the ALJ should

1 have more fully developed the record if he found that Dr.
2 Zeoco's report was vague and ambiguous.

3 I do find that substantial evidence supports the
4 ALJ's decision. His -- first of all, his observation that Dr.
5 Zeoco's opinions were based heavily on Ms. Hogan's subjective
6 complaints is accurate. A large part of her report repeats
7 the history that Ms. Hogan herself gives. And I would point
8 out that Dr. Zeoco's opinion was reviewed by another
9 psychologist, as I've said, Dr. Kevin Santulli. So he had the
10 benefit of Dr. Zeoco's report when he fashioned his opinion.

11 I do think it's important to note that Dr. Zeoco also
12 noted that Ms. Hogan's activities of daily living, that
13 included she drives, she has a driver's license, she completes
14 activities of daily living without assistance, except that her
15 15 year old apparently helps her put on makeup because of her
16 tremors. She communicates in a socially adequate manner,
17 communicates in an effective and intelligible manner. She's
18 able to cope with the typical cognitive demands of basic work-
19 like activities, manages her own funds. Her thought process
20 is logical, relevant, goal orient -- goal directed. She lives
21 with her mother and three of her five children, since
22 separating from what sounds like her no-account husband.

23 So, I think that there was no necessity for the ALJ
24 to ask Dr. Zeoco to clarify her opinion. The opinion about
25 possible problems were so speculative, including words like

1 "They might sometimes; she might sometimes have some
2 difficulty." That's really not enough to support a finding
3 that she would have those problems.

4 Ms. Hogan herself testified at the hearing about her
5 activities of daily living and testified that she helps get
6 her children ready for school, she does laundry, picks up
7 around the house, cooks some, helps her children with their
8 homework, and puts them to bed after they have bathed and
9 gotten ready for bed.

10 The ALJ was not required to adopt every part of the
11 opinion of this consulting doctor, psychologist, who saw her
12 only once. And he certainly was not required to give
13 controlling weight to that one GAF score of 45. The current
14 DSM, which is DSM-5, has eliminate -- has eliminated the use
15 of GAF scores, in part, because of their, quote:

16 "Conceptual lack of clarity and
17 questionable psychometrics and
18 routine practice."

19 Moreover, the Social Security regs make it clear that
20 GAF scores are not dispositive.

21 The ALJ also properly took into account
22 inconsistencies in Ms. Hogan's testimony. You know, in spite
23 of her testimony about these disabling tremors, the ALJ
24 observed no tremors at the time of the hearing. And at the
25 time of the hearing, she had not been to see her primary care

1 doctor for approximately five months. And there's no record
2 of her ever seeking treatment for her mental health problems
3 except her visits to her primary care physician.

4 Other inconsistencies are in the record. She refers
5 to lupus causing memory problems, but there's no diagnosis of
6 lupus that I found anywhere in the record.

7 The ALJ also properly noted her poor work history,
8 although I don't put a lot of -- a lot of weight on that, she
9 is 32 years old and had five children, she didn't have much
10 opportunity to find work. So, I'm not particularly dwelling
11 on that, although that is something that ALJs can properly
12 consider. And again, her lack of mental health treatment.

13 So, because of all of this, I think that the ALJ
14 adequately accommodated all of her mental impairments that are
15 fairly supported by the record.

16 So, I find no legal error. And for the reasons we've
17 just discussed, I find there's substantial evidence to support
18 the decision here that Ms. Hogan was not disabled within the
19 meaning of the Social Security Act as of the time of the
20 hearing. Although there is certainly evidence on the other
21 side, I don't find that this is really a very close case.
22 There is ample evidence here to support the decision.

23 So, we will have a transcript of the findings and
24 conclusions prepared. And that will be attached to an order.
25 That will take a couple of weeks or so.

1 I do want to thank the lawyers. Professor Wallace
2 always makes an excellent argument and makes the most out of
3 the record. There just was not much of a record in this case
4 to -- that he could work with in this case. Also, thanks to
5 Ms. Reese from the Social Security Administration. You did a
6 very good job, as well.

7 So, if there's nothing further. We are adjourned.

8 MR. WALLACE: Thank you, Your Honor.

9 MS. REESE: Thank you, Judge.

10 (Adjournment at 10:36 a.m.)

11 ELECTRONIC SOUND RECORDING CERTIFICATION:

12 I, court approved transcriber, certify that the foregoing is a
13 correct transcript from the official electronic sound
14 recording of the proceedings in the above-entitled matter.

15
16 /s/Robin Warbritton
Signature of Approved Transcriber

June 25, 2015
Date

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18 Robin Warbritton
19 Typed or Printed Name
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